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C O N F I D E N T I A L SECTION 01 OF 02 ADDIS ABABA 002731

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SUBJECT: ETHIOPIA: CUD DEFENSE ATTORNEYS OUTLINE CASE
AGAINST CIVIL SOCIETY REPRESENTATIVES

REF: ADDIS ABABA 02179

Classified By: CHARGE D'AFFAIRES VICKI HUDDLESTON. REASON: 1.4(D)

¶1. (C) SUMMARY: In a meeting with the Charge, defense attorneys for the accused civil society defendants in the trial of Coalition for Unity and Democracy (CUD) leaders, civil society representatives and independent journalists, reported that the evidence presented thus far against their clients, in video and document format, has been very limited.

However, they have not been told yet what witnesses the prosecution will call. The attorneys envision that the most challenging portion of their defense will be to disprove the prosecution's conspiracy charges, particularly in light of certain evidence previously presented against some CUD leaders that they feel might be damaging. The attorneys for the civil society leaders made it clear that they will seek to question the link between their clients and the alleged CUD-lead conspiracy, rather than indirectly defending the whole group. END SUMMARY.

¶2. (U) On September 25, Charge, together with Pol/Econ Counselor and Poloff, met with Eklilu Solomon and Colonel Mengistu Hailemariam, the defense attorneys for the civil society representatives on trial in the CUD case. Eklilu is the attorney for defendant Kassahoun Kebede of the Ethiopian Teachers, Association (ETA), and Colonel Mengistu is the attorney for Daniel Bekele and Netsanet Demissie of ActionAid.

HEALTHY BUT RESILIENT

¶3. (C) Eklilu and Colonel Mengistu both reported that their clients are in good spirits and that during the court's two-month break, they have been treated fairly by prison officials. In fact, Colonel Mengistu speculated that Daniel and Netsanet may receive the best treatment among all CUD defendants. Daniel and Netsanet are both reported to be in good health, whereas Kassahoun had an extended stay in the hospital following surgery, but has since recovered and is back at Kaliti prison. Though their clients were at first very angry at what they believe to be the injustice of their imprisonment, they have since accepted the process and "feel things will work out according to proper legal procedures." The attorneys also reported that they have not had any problems in gaining access to the clients at the prison.

LIMITED EVIDENCE SO FAR, BUT CONSPIRACY CHARGES LOOM

¶ 14. (C) In recalling what evidence had been presented by the accused to date against their clients, both attorneys said that the only specific material was in the documentary evidence. Colonel Mengistu recalled that the prosecutor had announced previously that no documentary evidence would be presented against his clients. However, the prosecution later decided to submit an additional nine documents specific to Daniel and Netsanet (reftel), several of which the defense claims were falsified. The bench is still considering the admissibility of this evidence. Eklilu said that in the original set of documentary evidence, there were six documents specific to Kassahoun, which were mostly minutes from ETA meetings. The additional documentary evidence contains one new copy of ETA meeting minutes. Both of the attorneys said that despite the fact that their clients have not appeared in any of the videos, the prosecution intends that video evidence be considered evidence against all defendants under the charge of conspiracy. Defense attorneys have not yet been informed of which witnesses the prosecution plans to call and whether any will be testifying against Daniel or Netsanet.

DEFENSE FOCUSED ON CLEARING NGO LEADERS, NOT CUD

¶ 15. (C) Colonel Mengistu told the Charge the focus of the defense will be disproving his clients' participation in the alleged conspiracy. Colonel Mengistu said he believes that there has been some possibly damning evidence presented

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already against some members of the top CUD leadership. The attorneys feel that prosecution will attempt to use this evidence, and according to article 38 of the Ethiopian criminal code, prove that all of the defendants are guilty by association and that all subscribed to the same agenda of overthrowing the Ethiopian government. Colonel Mengistu said that, to his knowledge, no case based on article 38 has been tried in Ethiopian courts to date. (NOTE: Poloff later learned that during the week of October 2, Colonel Mengistu visited South Africa to meet with the former attorney of Nelson Mandela to discuss defending conspiracy cases. END NOTE)

DEFENSE WILL BE QUICK, BUT WITNESSES UNKNOWN

¶ 16. (C) Eklilu and Colonel Mengistu claimed that the upcoming defense portion of the trial will be much shorter than the prosecution. They anticipated that once the trial resumes on October 5, the bench will rule on the admissibility of the additional documentary evidence and will soon turn to witnesses. (NOTE: On October 5, only 2 of the 3 judges appeared in court. They ruled that they did not have quorum to make a decision on the evidence and adjourned the trial for October 13. END NOTE) Though they do not know the total number or the identities of witnesses to be called, they will have the opportunity to cross examine the witnesses immediately after the prosecution's questioning. Following the witness stage, the defense will have the opportunity to present its case against documentary and video evidence. (NOTE: PM Meles has indicated several times that he hopes the trial will conclude by the end of 2006 or early 2007. END NOTE)

COMMENT: CONSPIRACY CHARGES LIKELY WILL BE KEY TO DEFENSE

¶ 17. (C) It is noteworthy that (the unfortunately named) Colonel Mengistu believes that the prosecution may have a

credible case against some senior CUD leaders, and that the lawyers for NGO leaders - the only defense attorneys in court - have no intention of challenging that case. Rather, they will seek to undermine the link the prosecution hopes to establish between civil society representatives and the alleged conspiracy. Colonel Mengistu seemed relatively optimistic that Daniel Bekele and Netsanet Demissie might eventually be cleared and released.

HUDDLESTON